

1 BARRY J. PORTMAN
Federal Public Defender
2 ELIZABETH M. FALK
Assistant Federal Public Defender
3 19th Floor Federal Building
450 Golden Gate Avenue
4 San Francisco, CA 94102
(415) 436-7700
5
6 Counsel for Defendant SIMCHO

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) No. CR 06-542 MHP
11)
Plaintiff,)
12) **STIPULATION AND ~~PROPOSED~~**
v.) **ORDER FOR CONTINUANCE OF**
13) **SENTENCING**
DAVID SIMCHO,)
14) Date: December 8, 2008
Time: 9:00 a.m.
15 Defendant.) Court: The Honorable Marilyn Hall
Patel

16
17 The parties hereby stipulate and agree as follows:

- 18 1. This matter is set for sentencing on December 8, 2008 at 9:00 a.m.;
- 19 2. AFD Elizabeth Falk is still on maternity leave. AFD Falk gave birth on August
20 18, 2008, and her daughter will not be three months old until November 18, 2008,
21 at which time AFD Falk will be able to hire childcare to attend to the cases she
22 has retained while on maternity leave;
- 23 3. The parties are actively engaging in discussions regarding the proper amount of
24 restitution that Mr. Simcho will owe at the time of sentencing. This analysis
25 requires defense counsel to re-review over 5000 pages of discovery to determine
26 Mr. Simcho's actual income over the four years charged in the indictment. The

1 issue is complicated because the government and Mr. Simcho dispute whether
2 there are certain reimbursement checks for company expenses or other payments
3 that may affect the ultimate calculation of restitution owed by Mr. Simcho;

4 4. Prior to sentencing, the government and the defense are endeavoring to resolve
5 any disputes between them on this issue. The goal is to present a joint figure to
6 the Court for restitution at sentencing. Defense counsel and government counsel
7 are thus meeting to discuss the initial restitution figures proposed by the
8 government on November 4, 2008 at 9:30 a.m. After this meeting, defense
9 counsel will need to review the government's calculations vis a vis the discovery
10 in the case, and make a counter-proposal to the government. The parties then
11 expect further discussions to ensue and plan to arrive at a joint figure of restitution
12 that both parties are in agreement on;

13 5. The parties anticipate that these pre-sentence negotiations will ultimately avoid
14 the need for a lengthy restitution hearing at sentencing, and thus will ultimately
15 serve the purposes of judicial efficiency and economy;

16 6. The parties thus jointly request that the sentencing be continued to March 2, 2009
17 at 9:00 a.m.;

18
19
20 //

21
22
23 //

24
25 //
26

7. United States Probation Officer Cristina Carruba has been consulted about the potential change in sentencing date to March 2, 2009, and has no objection to said request for a continuance. Should the Court grant the parties request, the USPO requests the Court to order that the Final Presentence Report is due to the Court no later than February 16, 2009.

IT IS SO STIPULATED.

Dated: November 3, 2008

_____/S/_____
ELIZABETH M. FALK
ASSISTANT FEDERAL PUBLIC DEFENDER
Attorney for David Simcho

Dated: November 3, 2008

_____/S/_____
CYNTHIA STIER
ASSISTANT UNITED STATES ATTORNEY

~~PROPOSED~~ ORDER

For the reasons set forth above, the sentencing in the aforementioned matter is hereby CONTINUED from December 8, 2008 to March 2, 2009 at 9:00 a.m.. The Final Presentence Report is due to this Court no later than February 16, 2009.

IT IS SO ORDERED.

DATED: 11/14/08

